

OCA FILE *Leg*

4 October 1988

OCA 3319-88

MEMORANDUM FOR: Chief, L&PLD/OGC  
PMS/OL

FROM:  Legislation Division  
Office of Congressional Affairs

SUBJECT: Office of Federal Procurement Policy Act  
Amendments of 1988, H.R. 3345

1. On 13 September 1988, the House passed the above-captioned bill (attached). It is similar to the Senate-passed version, S. 2215. However, section 26(f)(2), which mandates the use of cost-accounting standards throughout the Government, does not provide for waiver by the head of an agency when in the public interest.

2. Conference has not occurred on this bill. If it poses problems as passed by the House, please let me know at your earliest opportunity.



Attachment

OCA,  (4 October 1988)

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variety of projects. Given the large number of requests and the availability of only \$6.5 million in grant funds, the award process was extremely competitive. The State of Nebraska, for example, has been the beneficiary of three approved projects including:

First. A trial judges' writing improvement project for the States of Colorado, Georgia, and Nebraska;

Second. A companion trial judges' writing improvement project for the same three States; and

Third. A regional training and technology transfer project for the States of Kansas, Iowa, Missouri, and Nebraska.

One of the fundamental justifications for the creation of the Institute was that the financial assistance it would provide to State courts and their affiliated organizations would also benefit the Federal courts and help the State courts enforce Federal constitutional and legislative requirements. The Institute in 1987 funded a number of projects that are intended to reduce the workload burdens of the Federal courts, educate State judges and other court personnel, and help State courts implement the requirements of Federal law.

I urge my colleagues to support this bill.

□ 1345

Mr. KASTENMEIER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. GRAY of Illinois). The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 4807, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

## GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4807, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

## OFFICE OF FEDERAL PROCUREMENT POLICY ACT—AMENDMENTS OF 1988

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 8345) to amend and extend the Office of Federal Procurement Policy Act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3345

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

## SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Federal Procurement Policy Act Amendments of 1988".

## SEC. 1. POLICY, FINDINGS AND PURPOSE:

(a) **POLICY.**—Section 2 of the Office of Federal Procurement Policy Act (41 U.S.C. 401) is amended by striking out "the Congress" and inserting "the United States Government".

(b) **FINDINGS AND PURPOSE.**—Section 3 of the Office of Federal Procurement Policy Act (41 U.S.C. 402) is amended in subsection (a) by inserting "Government-wide" before "procurement policies".

## SEC. 2. AUTHORITY AND FUNCTIONS OF THE OFFICE ADMINISTRATOR.

(a) **IN GENERAL.**—Section 8 of the Office of Federal Procurement Policy Act (41 U.S.C. 405) is amended—

(1) in subsection (a), by striking out "which shall be implemented in the single system of Government-wide procurement regulations and shall be" and inserting a period and the following: "Except as otherwise prohibited by law, these policies shall be implemented by the Federal Acquisition Regulatory Council and";

(2) in subsection (b)—

(A) by inserting after "General Services Administration" the following: "acting through the Federal Acquisition Regulatory Council"; and

(B) by striking out "may" and inserting "shall";

(3) in subsection (d)—

(A) by striking out paragraphs (d) and (e) and inserting the following:

"(A)(A) providing for and directing the activities of the computer-based Federal Procurement Data System (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to adequately collect, develop, and disseminate procurement data; and

"(B) ensuring executive agency compliance with the record requirements of section 18;

"(5) providing for and directing the activities of the Federal Acquisition Institute (including recommending to the Administrator of General Services a sufficient budget for such activities), which shall be located in the General Services Administration, in order to—

"(A) foster and promote Government-wide career management programs for a professional procurement work force; and

"(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies";

(B) by striking out "and" at the end of paragraph (7);

(C) by striking out the period at the end of paragraph (8) and inserting "; and"; and

(D) by adding at the end the following:

"(9) issuing and maintaining regulations, in accordance with section 22, to establish standards of conduct and post-employment limitations for employees of the Federal Government involved in procurement or procurement systems"; and

(4) in subsection (f) by striking out "The Director of the Office of Management and Budget" and inserting "The Administrator, with the concurrence of the Director of the Office of Management and Budget";

(b) **REAUTHORIZATION.**—Section 11 of such Act (41 U.S.C. 410) is amended by striking out "for each of the three succeeding fiscal years" and inserting "such sums as may be necessary for each succeeding fiscal year".

(c) **CONFORMING AMENDMENT.**—Section 4 of such Act is amended by striking out paragraph (4) and redesignating paragraphs (5) through (11) as paragraphs (4) through (10), respectively.

## SEC. 4. FEDERAL ACQUISITION REGULATORY COUNCIL.

The Office of Federal Procurement Policy Act is further amended by adding at the end the following:

## "FEDERAL ACQUISITION REGULATORY COUNCIL.

"SEC. 25. (a) There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the "Council") to assist in the direction and coordination of Government-wide procurement policy and Government-wide procurement regulatory activities in the Federal Government.

"(b)(1) The Council shall consist of the Administrator for Federal Procurement Policy and—

"(A) the Secretary of Defense,

"(B) the Administrator of National Aeronautics and Space; and

"(C) the Administrator of General Services.

"(2) Notwithstanding section 205(d) of the Federal Property and Administrative Services Act of 1949, the officials specified in subparagraphs (A), (B), and (C) of paragraph (1) may designate to serve on and attend meetings of the Council in place of that official (A) the official assigned by statute with the responsibility for acquisition policy in each of their respective agencies; or (B) if no official of such agency is assigned by statute with the responsibility for acquisition policy for that agency, the official designated pursuant to section 26(3) of this Act. No other official or employee may be designated to serve on the Council.

"(c)(1) Acting through the Council, the Administrator, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities under section 6 of this Act (41 U.S.C. 405), title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, et seq.), chapters 1 and 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451, et seq.), and subject to section 6(b) of this Act, shall jointly issue and maintain a single Government-wide procurement regulation, to be known as the "Federal Acquisition Regulation".

"(2) Any other regulations relating to procurement issued by an executive agency shall be limited to (A) regulations essential to implement Government-wide policies and procedures within the agency, and (B) additional policies and procedures required to satisfy the specific and unique needs of the agency.

"(3)(A) To the extent that any regulation issued by an executive agency relating to procurement is, or would be, inconsistent with a provision of the Federal Acquisition Regulation, the provision of the Federal Acquisition Regulation shall govern, except that, if the head of an executive agency, at the recommendation of the official identified in subsection (b)(2)(A) or (B), determines that there is an urgent and compelling need for a regulation that is inconsistent with a provision of the Federal Acquisition Regulation, the head of such agency may, subject to subparagraph (B) of this paragraph, issue such regulation. Any such inconsistent regulation may be in effect for no more than 6 months and may not be reissued in the same or any different form or variation without the written approval of the Administrator. The authority to make determinations and grant approvals under this subparagraph may not be delegated.

"(B) Nothing in this paragraph shall be construed—

"(4) to permit a regulation by an executive agency that is, or would be, inconsistent with a provision of any Federal statute fin-

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cluding this Act) or any standard for modification thereof promulgated by the Cost Accounting Standards Board under section 25 of this Act; or

"(ii) to exempt a regulation issued by an executive agency under the authority of subparagraph (A) of this paragraph from section 6(f) of this Act.

"(d) Subject to the authority, direction, and control of the head of the agency concerned, each official who represents an agency on the Council pursuant to subsection (b) shall—

"(1) approve or disapprove all regulations that are, after the date of enactment of this section, proposed for public comment, promulgated in final form, or otherwise made effective by such agency relating to procurement before such regulation may be proposed for public comment, promulgated in final form, or otherwise made effective;

"(2) carry out the responsibilities of such agency set forth in chapter 35 of title 44, United States Code, for each information collection request (as that term is defined in section 3502(11) of title 44, United States Code) that relates to procurement; and

"(3) eliminate or reduce (A) any redundant or unnecessary levels of review and approval, in the procurement system of such agency, and (B) redundant or unnecessary procurement regulations which are unique to that agency.

"(e) All actions of the Council and of members of the Council shall be in accordance with and furtherance of the policies of section 2 and the policies prescribed under section 6(a) of this Act.

"(f) Subject to section 6(b), the Council shall manage, direct, coordinate, control, and monitor the maintenance of, and issuance of changes in, the Federal Acquisition Regulation.

"(g) The Administrator for Federal Procurement Policy shall—

"(1) publish a report within 6 months after the date of enactment of this section and every 6 months thereafter relating to the development of procurement regulations by the Council and, to the extent appropriate, by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration;

"(2) include in each report published under paragraph (1)—

"(A) the status of each such regulation;

"(B) a description of those regulations which are required by statute;

"(C) a description of the methods by which public comment was sought with regard to each proposed regulation in accordance with section 22 of this Act, and to the extent appropriate, sections 3504(h) and 3507 of title 44, United States Code;

"(D) regulatory activities completed and initiated since the last report;

"(E) regulations, policies, procedures, practices, and forms that are under consideration or review by the Office of Federal Procurement Policy;

"(F) whether the regulations have paperwork requirements;

"(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

"(H) such other matters as the Administrator determines would be useful; and

"(3) report to Congress within 180 days after the date of the enactment of this section, in consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

"(A) the extent of the paperwork burden created by the Federal procurement process, and

"(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while at the

same time maintaining recordkeeping and reporting requirements necessary to ensure the integrity and accountability of the system."

**SEC. 6 COST ACCOUNTING STANDARDS BOARD.**

The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following:

**"COST ACCOUNTING STANDARDS BOARD**

"SEC. 26. (a)(1) There is established within the Office of Federal Procurement Policy an independent board to be known as the 'Cost Accounting Standards Board' (hereinafter referred to as the 'Board'). The Board shall consist of 7 members, including the Administrator, who shall serve as Chairman, and 6 members, all of whom shall have experience in Government contract cost accounting, and who shall be appointed as follows:

"(A) two representatives of the Federal Government—

"(i) one of whom shall be a representative of the Department of Defense and be appointed by the Secretary of Defense; and

"(ii) one of whom shall be a representative of civilian agencies and be appointed by the head of a civilian agency designated by the Administrator;

"(B) two representatives of industry, each of whom shall be appointed by the Administrator, and one of whom shall have substantial experience and knowledge of problems of small businesses;

"(C) two individuals from the private sector, each of whom shall be appointed by the Administrator and shall have substantial accounting experience and—

"(i) one of whom shall be a member of an academic institution; and

"(ii) neither of whom is employed by, or affiliated with (I) a Government contractor, or (II) any accounting, legal, consultant, or other professional services firm, a substantial part of whose business is providing services to any Government contractor or contractors with respect to Government procurement.

"(2)(A) The term of office of each of the members of the Board, other than the Administrator for Federal Procurement Policy, shall be 4 years, except that—

"(i) of the initial members, two shall be appointed for terms of two years, two shall be appointed for terms of three years, and two shall be appointed for terms of four years;

"(ii) any member appointed to fill a vacancy in the Board shall serve for the remainder of the term for which his predecessor was appointed; and

"(iii) no individual who is appointed under paragraph (1)(A) of this subsection shall continue to serve after ceasing to be an officer or employee of the Government.

"(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

"(C) The initial members of the Board shall be appointed within 90 days after the date of enactment of this section."

"(b) The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

"(c) The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5, United States Code.

"(d)(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 5109(b) of title 5, United States Code, of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(e) Except as otherwise provided in subsection (a), the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (d)(1), shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or employee. Each member of the Board appointed from private life shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level IV of the Executive Schedule for each day (including travel time) in which the Member is engaged in the actual performance of duties vested in the Board. Individuals hired under subsection (d)(2) may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5, United States Code, for each day (including travel time) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5703 of title 5, United States Code.

"(f)(1) The Board shall have the exclusive authority to make, promulgate, amend, and rescind cost accounting standards and interpretations thereof designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States.

"(2) Cost accounting standards promulgated under this section shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States in excess of \$100,000, other than contracts or subcontracts where the price negotiated is based on (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulation.

"(3) No regulation of an executive agency may be inconsistent with a cost accounting standard promulgated or amended under this section. Costs which are the subject of cost accounting standards promulgated by the Board shall not be subject to regulations established by any executive agency that differ from such standards, by being either inconsistent or more or less restrictive. In any case in which any such regulation established by an executive agency is determined to differ from cost accounting standards promulgated by the Board, contracts and subcontracts subject to the conflicting regulations shall be controlled only by the

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cost accounting standards promulgated by the Board.

"(4) Not later than 180 days after the date of enactment of this section, the Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this section. Such rules and procedures shall require that any cost accounting standard promulgated, amended, or rescinded (and interpretations thereof) shall be adopted by majority vote of the Board members.

"(5) The Board is authorized—

"(A) to exempt classes or categories of contractors and subcontractors from the requirements of this section; and

"(B) to establish procedures for the waiver of the requirements of this section with respect to individual contractors and subcontractors.

"(g)(1) Prior to the promulgation under this section of cost accounting standards and interpretations thereof, the Board shall—

"(A) take into account, after consultation and discussions with the Comptroller General and professional accounting organizations, contractors, and other interested parties—

"(i) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

"(ii) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

"(iii) the scope of, and alternatives available to, the action proposed to be taken;

"(B) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1)(A);

"(C)(i) publish an advanced notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to subparagraph (B);

"(ii) provide all parties affected a period of not less than 60 days after such publication to submit their views and comments; and

"(iii) during this 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

"(D) publish a notice of such proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit their views and comments.

"(2) Cost accounting standards promulgated or amended by the Board shall have the full force and effect of law, and shall become effective at such time as is specified in the implementing regulations prescribed by the Council for such cost accounting standard. Implementation dates for contractors and subcontractors will be determined by agreement with the cognizant Federal agency, but in no event later than the beginning of the contractor's or subcontractor's next fiscal year. Cost accounting standards and modifications thereof promulgated by the Board will be accompanied by prefatory comments, and by illustrations where deemed necessary.

"(3) The functions exercised under this section are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

"(h)(1) The Federal Acquisition Regulatory Council (established under section 25 of this Act), after consultation with the Board, shall promulgate rules and regulations for the implementation of cost accounting standards promulgated or interpreted under subsection (f). Such regulations shall require contractors and subcontractors as a condition of contracting with the United States to—

"(A) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

"(B) agree to a contract price adjustment, with interest, for any increased costs paid to such contractor or subcontractor by the United States by reason of a change in the contractor's or subcontractor's cost accounting practices or by reason of a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

"(2) If the United States and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

"(3) Any contract price adjustment undertaken pursuant to paragraph (1)(B) shall be made, where applicable, on relevant contracts between the United States and the contractor that are subject to the cost accounting standards so as to protect the United States from payment, in the aggregate, of increased costs. Any contract price adjustment undertaken pursuant to paragraph (1)(B) on a firm fixed price contract shall be made only when the contractor makes a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Government.

"(4) The interest rate applicable to any contract price adjustment shall be the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. section 6621) for such period. Such interest shall accrue from the time payments of the increased cost were made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment.

"(i) The Board shall report to the Congress not later than one year after the date of enactment of this section, and annually thereafter, with respect to the activities and operations of the Board under this section, together with such recommendations as it considers appropriate.

"(j)(1) All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations promulgated by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless and until amended, superseded, or rescinded by the Board pursuant to this section.

"(2) Existing cost accounting standards referred to in paragraph (1) shall be subject to the provisions of this Act in the same manner as if promulgated by the Board under this Act.

"(3) The Administrator, under the authority set forth in section 6 of this Act, shall ensure that no regulation of an executive agency is inconsistent with a cost accounting standard promulgated or amended under this section. Costs which are the subject of cost-accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

"(k) For the purpose of determining whether a contractor or subcontractor has complied with cost-accounting standards promulgated under this section and has followed consistently his disclosed cost-accounting practices, any authorized representative of the head of the agency concerned, of the offices of inspector general es-

tablished pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States shall have the right to examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to compliance with such cost-accounting standards.

"(l) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

## SEC. 6. PROCUREMENT INTEGRITY.

(a) AMENDMENT.—The Office of Federal Procurement Policy Act is further amended by adding at the end the following:

## "PROCUREMENT INTEGRITY

"SEC. 27. (a) During the conduct of any Federal agency procurement of property or services, it shall be unlawful—

"(1) for any officer, employee, agent, or representative of any competing contractor knowingly to make, directly or indirectly, any offer or promise of future employment or business opportunity to, or knowingly to engage in any discussion of future employment or business opportunity with, any procurement official or employee of such agency;

"(2) for any officer, employee, agent, or representative of any competing contractor knowingly to offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official or employee of such agency;

"(3) for any procurement official or employee of such agency knowingly to ask, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value (including an offer of future employment) from any officer, employee, agent, or representative of any competing contractor for such procurement;

"(4) for any procurement official or employee of such agency knowingly to disclose, directly or indirectly, to any unauthorized person (as defined in regulations prescribed by the Federal Acquisition Regulatory Council to carry out this section), prior to the award of a contract and with regard to the bids or proposals of competing contractors—

"(A) any confidential or proprietary data of the competing contractors for such procurement; or

"(B) any other information the disclosure of which to a competing contractor would give that contractor an unfair competitive advantage with respect to that procurement, or would otherwise undermine or harm the Government's negotiating position with regard to the procurement concerned;

"(5) for any officer, employee, agent, or representative of any competing contractor or any other such unauthorized person knowingly to solicit or obtain any information described in clause (A) or (B) of paragraph (4) prior to the award of a contract; or

"(6) for any person who is given authorized or unauthorized access to information described in clause (A) or (B) of paragraph (4) prior to the award of a contract knowingly to disclose such information to any unauthorized person (as defined in regulations prescribed by the Federal Acquisition Regulatory Council to carry out this section).

"(b)(1) A Federal agency may not award any contract, or agree to any modification or extension of any contract, for the procurement of any property or services to any competing contractor unless—

"(A) the officer or employee of such competing contractor who is responsible for the offer or bid for the contract certifies in writ-

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ing to the contracting officer for such procurement that—

"(i) to the best of that officer's or employee's knowledge and belief, there has been no violation, with respect to such contract, of the requirements of subsection (a), this subsection, or the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(ii) each officer, employee, agent, and representative of such contractor who has participated personally and substantially in the conduct of the agency procurement has—

"(1) signed an agreement with such contractor to comply with this section; or

"(II) complied with the requirements of paragraph (2) of this subsection;

"(B) each procurement official and employee of such agency certifies in writing to the contracting officer that neither the competing contractor nor the official or employee, as applicable, has, to the best of that procurement official's or employee's knowledge and belief, violated the requirements of subsection (a), this subsection, or the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(C) the contract specifies that if the contractor violates the requirements of subsection (a), the contractor shall be in default.

"(2) For purposes of enforcing the requirements of clause (ii) of paragraph (1)(A), if a competing contractor has in place an ethics program which—

"(A) is updated periodically;

"(B) provides written materials to its officers, employees, agents, and representatives that contain specific references to the prohibitions of this section and regulations issued pursuant to this section; and

"(C) requires such officers, employees, agents, and representatives to certify that they have read such materials and that they will comply with the requirements of such ethics program, then any officer, employee, agent, or representative making that certification shall be considered to have complied with the requirements such clause (ii) of paragraph (1)(A).

"(3)(A) If a procurement official or employee ceases to serve in that capacity with respect to a procurement, the certification required by paragraph (1)(B) shall be required both from such official or employee (at the time of ceasing to so serve) and from any procurement official or employee who assumes responsibility with respect to such procurement.

"(B) If a procurement official or employee refuses to make the certification required by paragraph (1)(B), or agrees to make the certification only with a qualification or restriction, the head of the agency concerned shall conduct a hearing to determine—

"(i) whether such official or employee shall be ineligible for service as a procurement official or employee on any future procurement;

"(ii) whether any other personnel action should be taken in accordance with procedures required by applicable law or regulation for personnel actions taken against employees of the agency concerned; and

"(iii) whether, in light of the requirements of subsection (e), the procurement should proceed or be re-competed and whether debarment proceedings should begin.

"(4) For the purposes of enforcing the requirements of this section, the contracting officer responsible for the conduct of a procurement shall maintain, as part of the procurement file—

"(A) all certifications made by agency procurement officials or employees as required by this subsection;

"(B) a record (including dates of involvement in the procurement) of all individuals

serving as procurement officials or employees with respect to such procurement; and

"(C) a record of all other persons who have been given access to information described in clause (A) or (B) of subsection (a)(4).

"(5) Any person making a certification required by paragraph (1) shall be notified of the applicability of section 1801 of title 18, United States Code, to false, fictitious, or fraudulent statements in such certification.

"(c) It shall be unlawful for any individual who, during the conduct of any Federal agency procurement, was engaged as a procurement official or employee of such agency in the conduct of such procurement and who made a certification under subsection (b)(1)(B) with respect to such procurement—

"(1) to participate in any manner, as an officer, employee, agent, or representative of a competing contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement; or

"(2) to participate personally and substantially on behalf of the competing contractor in the performance of such contract, during the 3-year period beginning on the date such individual ceases to be a procurement official or employee with respect to such procurement.

"(d) Any individual who is or was a procurement official or employee, and who is found, after notice and opportunity for a hearing in accordance with procedures required by applicable law or regulation for personnel actions taken against employees of the agency concerned, to have violated knowingly any of the requirements of this section, shall be ineligible for any service as a Federal procurement official or employee for any future procurements. The head of a Federal agency may waive, in whole or in part, such ineligibility if the head determines that such waiver is necessary in the public interest. The authority of the head of a Federal agency under the preceding sentence may not be delegated.

"(e)(1) If an agency receives or obtains information providing a reasonable basis to believe that an officer, employee, agent, or representative of a competing contractor has knowingly violated the requirements of this section—

"(A) in the case of a procurement that is pending, the agency shall determine, in accordance with regulations issued by the Federal Acquisition Regulatory Council, whether such a knowing violation has occurred and, if such a violation has occurred, whether to terminate the procurement;

"(B) in the case of a procurement with respect to which a contract has been awarded, the agency shall determine, after notice and opportunity for a hearing, whether such a knowing violation has occurred and, if such a violation has occurred, whether to void or rescind the contract, to terminate the contract for default, to impose other authorized sanctions upon the contractor, or to permit the contractor to continue to perform the contract, subject to review in accordance with the Contract Disputes Act of 1978; and

"(C) if the agency determines (under subsection (A) or (B), or otherwise) that such a knowing violation has occurred, the agency—

"(i) may, in accordance with regulations issued by the Federal Acquisition Regulatory Council, impose an immediate suspension of the competing contractor; and

"(ii) shall initiate a debarment proceeding in accordance with paragraph (2) to determine whether, and for what period of time, the contractor shall be ineligible for award of any contract with, and for participation in any future procurement by, the Government.

"(2)(A) A debarment proceeding subject to this paragraph shall be conducted by the board of contract appeals of the agency which conducts the procurement. The board of contract appeals shall (i) resolve all issues of fact, (ii) determine whether a basis exists for debarment of the contractor, or of a subsidiary, division, affiliate, officer, employee, agent, or representative of the contractor, and (iii) issue a final decision for or against debarment, and (iv) if the decision is for debarment, specify the period (not to exceed 3 years) that the contractor will be ineligible for award of any contract with, or for participation in a future procurement by, the Government.

"(B) In the case of an agency that does not have a board of contract appeals, the General Services Administration Board of Contract Appeals shall make all determinations and issue final decisions under subparagraph (A) for each such agency.

"(C) Sections 8(g), 10(b), and 10(c) of the Contract Disputes Act of 1978 (41 U.S.C. 607(g), 609(b), and 609(c)) shall apply to determinations and decisions of the board of contract appeals of each agency under this paragraph to the same extent as such sections apply to decisions of an agency board of contract appeals under that Act. In applying such sections to a determination or decision under this paragraph, the term 'contractor' as used in those sections shall include any subsidiary, division, affiliate, officer, employee, agent, or representative to whom the determination or decision applies.

"(3) Upon issuance of any final decision under this subsection requiring debarment of a contractor (or subsidiary, division, affiliate, officer, or employee thereof), such contractor, subsidiary, division, affiliate, officer, or employee shall be ineligible for award of any contract with, and for participation in any future procurement by, the Government for a period specified in the decision, not to exceed 3 years, except that the head of an agency may permit such participation if the head determines in writing, on a contract-by-contract basis, that such participation is necessary in the public interest. The authority to make such determination may not be delegated. Upon issuance of any final decision against debarment of the contractor and its subsidiaries, divisions, affiliates, officials, and employees, the contractor may be compensated as provided by law or regulation.

"(4) The requirements, sanctions, and remedies established by this section are in addition to, and not in lieu of, any requirements, sanctions, and remedies established by any other law. Nothing in this subsection shall be construed to limit the applicability of the requirements, sanctions, and remedies established by any other law, but no agency shall be relieved of the obligation to carry out the requirements of this section because such agency has also applied such other requirements, sanctions, or remedies.

"(f) For purposes of this section—

"(1) the term 'conduct' means, with respect to a Federal agency procurement—

"(A) preparation and issuance of the procurement solicitation,

"(B) evaluation of proposals,

"(C) selection of sources, and

"(D) conduct of negotiations for the award, modification, or extension of a contract.

"(2) the term 'competing contractor', with respect to any procurement (including any procurement using procedures other than competitive procedures) of property or services, means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such procurement and includes any con-



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consultant, expert, adviser, and any other person acting on behalf of such an entity;

"(3)(A) the term 'procurement official or employee' means any official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement, as further defined by the regulations issued by the Federal Acquisition Regulatory Council to carry out this section; and

"(B) for purposes of subparagraph (A), the term 'employee of an agency' includes a contractor, subcontractor, consultant, expert, or adviser employed to conduct, or any other person acting (directly or indirectly) on behalf of the agency with respect to, any phase of the agency procurement concerned;

"(4) the term 'contracting officer' means any official or employee of a Federal agency who has been authorized by the agency head or his or her designee to enter into, administer, or terminate contracts and make related determinations and findings; and

"(5) the term 'Federal agency' has the meaning provided by section 3(b) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472(b)) which includes the Postal Service, the Tennessee Valley Authority, and other government corporations."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect 30 days after the date of enactment of this Act.

(c) **IMPLEMENTING REGULATIONS AND GUIDELINES.**—The Federal Acquisition Regulatory Council shall prescribe regulations and guidelines deemed appropriate to carry out section 27 of such Act (as added by subsection (a) of this section) as soon as practicable after the date of enactment of this Act. The chairman of each board of contract appeals shall prescribe rules and procedures governing actions under such section 27.

#### SEC. 7. PROFIT METHODOLOGY STUDY.

(a) **IN GENERAL.**—The Administrator shall conduct a study to develop a consistent methodology which executive agencies should use for measuring the profits earned by government contractors on procurements, other than procurements where the price is based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(b) **CONTRACTORS' FINANCIAL DATA.**—The methodology developed under subsection (a) shall include adequate procedures for verifying and maintaining the confidentiality of contractors' financial data.

#### SEC. 8. DEFINITION OF ARCHITECTURAL AND ENGINEERING SERVICES.

Section 901 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541) is amended by striking out paragraph (3) and inserting the following:

"(3) The term 'architectural and engineering services' means—

"(A) professional services of an architectural or engineering nature, as defined by State law, if applicable, which are required to be performed or approved by a person licensed, registered, or certified to provide such services as described in this paragraph;

"(B) professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

"(C) such other professional services of an architectural or engineering nature, or incidental services, which members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, in-

vestigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services."

#### SEC. 9. ESTABLISHMENT OF THE COMMERCIAL PRODUCTS ADVOCATE.

The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following:

##### "ADVOCATE FOR THE ACQUISITION OF COMMERCIAL PRODUCTS"

"SEC. 28. There is established in the Office of Federal Procurement Policy the position of Advocate for the Acquisition of Commercial Products. The Advocate shall report directly to the Administrator. The Advocate for Acquisition of Commercial Products shall—

"(1) review all proposed procurement regulations and report to the Administrator as to whether such regulations will encourage or discourage the acquisition of commercial products by Federal agencies;

"(2) provide recommendations to the Administrator as to which procurement regulations should be rescinded or modified to encourage the acquisition of commercial products; and

"(3) provide recommendations to the Administrator as to methods of simplifying procurement regulations governing acquisition of commercial products."

#### SEC. 10. STUDY AND REPORT BY THE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.

No later than April 1, 1989, the Administrator for Federal Procurement Policy, in consultation with the Comptroller General, shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives—

(1) on the extent to which the data collected by the Federal Procurement Data System is adequate for the management, oversight, and evaluation of Federal procurement; and

(2) which shall include any appropriate recommendations for improvements of such system.

The SPEAKER pro tempore. Is a second demanded?

Mr. HORTON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Texas [Mr. Brooks] will be recognized for 20 minutes and the gentleman from New York [Mr. Horton] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. Brooks].

Mr. BROOKS. Mr. Speaker, I yield myself 10 minutes.

Mr. Speaker, H.R. 3345 provides a permanent authorization for the office of Federal Procurement Policy [OFPP]. This office has served a worthwhile purpose in promoting efficiency and economy in the Federal procurement process. Over the years, it has vigorously pursued its mandate of: First, promoting full and open competition; second, reducing the extensive volume of agency regulations; and

third, simplifying the Government's procurement process. However, considerably more work needs to be done to achieve the goals envisioned by the Procurement Commission and the Congress. This is particularly true in view of the recent revelations about the Department of Defense procurement scandal.

H.R. 3345 was originally considered by the committee on September 29, 1987. However, concerns were raised by the Armed Services, Judiciary, and Banking Committees over several provisions. For the last several months, we have been working closely with those committees to forge a consensus on this legislation. Through these efforts, agreement has generally been reached in a number of critical areas.

#### OFPP AUTHORITY

OFPP is given a permanent authorization to oversee and direct the Government's procurement process. The amendment also creates a single "Federal Acquisition Regulatory Council," to manage and control the issuance of Governmentwide procurement regulations. Agency heads will retain control over the issuance of agency unique regulations.

#### COST ACCOUNTING STANDARDS

This provision would transfer the Cost Accounting Standards Board function to OFPP as an independent entity chaired by the Administrator. The Board has been dormant for a about 7 years and there is a general consensus within Government and industry that it should be reestablished.

#### PROCUREMENT INTEGRITY

The amendment contains sanctions for contractors offering Government procurement officials jobs or other things of value during the conduct of a procurement. It also creates rules governing the release of inside procurement information, and prohibits a Federal procurement official from becoming an employee of the contractor on that contract for a period of 3 years after ceasing to work on the contract.

Finally, the amendment contains provisions: First, directing OFPP to conduct a study to develop a profit policy methodology; second, clarifying the definition of A&E services in the Brooks Act; third, establishing in OFPP the position of advocate for the acquisition of commercial products; and fourth, requiring the OFPP Administrator to conduct a study of the Federal procurement data system.

When enacted, H.R. 3345 will significantly strengthen the oversight and management of the Federal procurement process. Given the recent DOD procurement scandal, it is critical that we adopt this legislation now. It will, in my view, go a long way toward cleaning up the system and making Government and contractor officials accountable for their actions.

I urge all my colleagues to support this important legislation.

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Mr. HORTON. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of H.R. 3345, the Office of Federal Procurement Policy Reauthorization Amendments of 1988.

H.R. 3345 would permanently authorize funding for the Office of Federal Procurement Policy. This bill is the result of recommendations of the Commission on Government Procurement on which I served as a member. The Commission found after an exhaustive 2-year study that a central high level office was needed to provide direction and leadership to reform the Government's procurement system. OFPP was established by Congress in 1974 and originally authorized for 5 years. It has been reauthorized periodically, and its last authorization, which was for a period of 4 years, expired on September 30, 1987.

OFPP, over the years, has served a valuable purpose. In promoting efficiency and economy in the procurement process it has pursued its mandate of promoting full and open competition, reducing the volume of agency regulations, and simplifying the Government's procurement process.

Mr. Speaker, in H.R. 3345 we have maintained both OFPP's ability to meet those goals, and enhance its ability to fully achieve those goals. Federal procurement has become one of, if not the most, highly visible issues before the Congress today. Almost on a daily basis we are confronted with new allegations of procurement fraud and abuses. With this bill we are seeking to strengthen the procurement process and to build within that process additional safeguards to prevent these abuses.

We are all aware of the waste that results from excessive regulation. I think it has been proven that too much regulation is harmful to Government and to industry. In fact, it is well documented that many vendors refrain from doing business with the Government because of the so-called red tape. H.R. 3345 creates a single Federal Acquisition Regulatory Council to manage and control the issuance of Governmentwide procurement regulations. In addition to the Council, the bill would also transfer the cost accounting standards function to OFPP where it would be administered by an independent entity chaired by the Administrator.

We reauthorized OFPP in 1983 and expanded its regulatory authority. H.R. 3345 builds on the 1983 reauthorization. A new section has been added to this bill.

Section 6, procurement integrity, was specially designed to address procurement fraud and abuses of which we read almost every day. This section contains sanctions for contractors, subcontractors, or their representatives who offer Government procurement officials jobs or other things of value during the conduct of a procure-

ment. It also contains rules against the release of inside procurement information, and it prohibits a Federal procurement official from becoming an employee of a contractor on a contract for a period of 3 years after ceasing to work for the Government on that contract. The bill also requires that prior to contract award, all participants must certify that the requirements of the section have been followed.

Mr. Speaker, this bill contains additional provisions which: First, direct OFPP to conduct a study to develop profit policy methodology; second, clarify the definition of architect and engineering services in the Brooks Act (P.L. 92-582); third, establish in OFPP the position of advocate for the acquisition of commercial products; and fourth, require the OFPP administrator to conduct a study of the Federal procurement data system.

Mr. Speaker, the Government Operations Committee has devoted many resources in efforts to improve the Federal procurement process. Two of our major successes have been the Inspectors General Act and the Competition in Contracting Act. These laws have greatly improved the process. But, as with any dynamic environment, we must continually make adjustments to meet different situations. We believe that by permanently reauthorizing OFPP and expanding its authorities we have provided the tools necessary to promote a fair and competitive Federal procurement system.

Mr. Speaker, I strongly support this legislation and urge my colleagues to join me in voting in favor of its passage.

Mr. ST GERMAIN. Mr. Speaker, I rise in support of H.R. 3345, the Office of Federal Procurement Policy Act Amendments of 1988. The Committee on Banking, Finance and Urban Affairs has worked closely with the Committee on Government Operations to fashion this excellent legislation. This close cooperation and the understanding reached between the two committees concerning consideration of legislation relating to this subject matter, allows the Committee on Banking, Finance and Urban Affairs to waive its consideration of H.R. 3345 without prejudice.

The understanding between the two committees which governs the jurisdiction over this subject matter is described in two documents contained in the committee's report on this bill. The first is a letter from my distinguished colleague, Chairman BROOKS:

H.R. 3345, as amended, contains certain provisions regarding the Cost Accounting Standards Board which fall within the jurisdiction of your Committee. Inclusion of these provisions is not in any way intended to diminish the jurisdiction of the Committee on Banking, Finance and Urban Affairs over these issues.

The second document, also contained in the committee's report, is a letter Congressman OAKAR and I sent to Speaker WRIGHT waiving the committee's consideration of H.R. 3345:

We have reached an understanding with the Government Operations Committee that the Committee on Banking, Finance and Urban Affairs would retain jurisdiction

over the Board to the extent that the new Cost Accounting Standards Board promulgates regulations on matters that were within the jurisdiction of the Committee on Banking, Finance and Urban Affairs when that Board was authorized through the Defense Production Act. In short, the agreement with the Government Operations Committee is that Section 5 of H.R. 3345 does not in any way diminish the jurisdiction of the Committee on Banking, Finance and Urban Affairs.

As the largest single purchaser of goods and services in the economy, the U.S. Government, and the American taxpayer, can no longer afford to be without the protections contained in this legislation. Chairman BROOKS and his Committee, in cooperation with other committees, has brought us legislation which deserves the support of the membership of the House. I urge my colleagues to support the much needed legislation.

Mr. HORTON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rule and pass the bill, H.R. 3345, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

**GENERAL LEAVE**

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3345, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2215) to amend the Office of Federal Procurement Policy Act to authorize appropriations for an additional 4 years, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

**S. 2215**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Reauthorization of the Office of Federal Procurement Policy Act of 1968".*

**REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY**

Sec. 2. Section 11 of the Office of Federal Procurement Policy Act (41 U.S.C. 410) is amended by striking out "for the fiscal year ending September 30, 1984, and for each of

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the three succeeding fiscal years" and inserting in lieu thereof "for each fiscal year".

## GOVERNMENT-WIDE PROCUREMENT REGULATIONS

Sec. 3. Section 8(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 485(b)) is amended by inserting after "timely manner," the following: "including any such regulations, procedures, and forms as are necessary to implement prescribed policy initiated by the Administrator under subsection (a)."

## FEDERAL ACQUISITION REGULATORY COUNCIL

Sec. 4. The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) is amended by adding at the end thereof the following new sections:

## "FEDERAL ACQUISITION REGULATORY COUNCIL

"Sec. 25. (a) There is established a Federal Acquisition Regulatory Council (hereinafter in this section referred to as the "Council") to assist in the direction and coordination of procurement regulatory activities in the Federal Government.

"(b) The members of the Council shall be the Administrator and the official assigned by statute with the responsibility for acquisition policy in each of the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration. If no official in any of such agencies is assigned by statute with the responsibility for acquisition policy for such agency, the head of such agency or any official designated by the head of such agency shall represent the agency on the Council.

"(c) Subject to the provisions of section 5 of this Act, the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to the respective authority of each such agency under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapters 4 and 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), shall jointly issue and maintain a single Government-wide procurement regulation, to be known as the 'Federal Acquisition Regulation'. An executive agency may promulgate a procurement regulation only to the extent that such regulation is appropriate as a 'single system of Government-wide regulations' as such term is defined under section 4(1) of this Act. The Administrator, in consultation with the Council, shall ensure that procurement regulations promulgated by executive agencies are consistent with the Federal Acquisition Regulation.

"(d) Subject to the authority, direction, and control of the head of the agency concerned, each official described or appointed under subsection (b) shall—

"(1) approve or disapprove all proposed and all final regulations of the department or agency of such official relating to procurement;

"(2) carry out the responsibilities of the department or agency set forth in chapter 35 of title 44, United States Code, for each information collection request as defined in section 3502(11) of title 44, United States Code, that relates to procurement rules or regulations; and

"(3) eliminate or reduce the redundant or unnecessary levels of regulatory review in the procurement system of the department or agency of such official.

"(e) All actions of the Council and of members of the Council shall be in accordance with and in furtherance of the policies of sections 2 and 6(a) of this Act.

"(f) Subject to the provisions of section 8(b), the Council shall—

"(1) manage, direct, coordinate and monitor the maintenance and issuance of modifi-

cations of the Federal Acquisition Regulation;

"(2) publish a report 6 months after the date of enactment of this section and every 6 months thereafter relating to the development of procurement regulations to be issued jointly by members of the Council and to the extent appropriate, by each of the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration;

"(3) include in each report published under paragraph (2)—

"(A) the status of each such regulation;

"(B) a description of the regulations which are required by statute;

"(C) whether public comment in accordance with section 22 of this Act, and to the extent appropriate, sections 1504(h) and 2507 of title 41, United States Code, was sought with regard to each proposed regulation;

"(D) regulatory activities completed and initiated since the most recently published report;

"(E) regulations, policies, procedures, practices, and forms under consideration or review by the Office of Federal Procurement Policy;

"(F) whether the regulations have paperwork requirements;

"(G) the progress made in promulgating and implementing the Federal Acquisition Regulation; and

"(H) such other matters as the Administrator determines useful; and

"(3) within 180 days after the date of the enactment of this section, submit a report to the Congress, after consultation with the Administrator of the Office of Information and Regulatory Affairs, regarding—

"(A) the extent of the paperwork burden created by the Federal procurement process; and

"(B) the extent to which the Federal procurement system can be streamlined to reduce unnecessary paperwork while maintaining recordkeeping and reporting requirements necessary to ensure the integrity of the system.

## "COST-ACCOUNTING STANDARDS BOARD

"Sec. 26. (a)(1) There is established within the Office of Federal Procurement Policy the 'Cost-Accounting Standards Board' (hereinafter referred to as the 'Board'), which shall consist of 5 members, including the Administrator, who shall serve as Chairman, and 4 other members, all of whom shall have experience in Government contract cost accounting and who shall be appointed as follows:

"(A) two shall be appointed who are officers or employees of the Federal Government—

"(i) one of whom shall be an officer or an employee of the Department of Defense and shall be appointed by the Secretary of Defense; and

"(ii) one of whom shall be an officer or an employee of the General Services Administration appointed by the Administrator of General Services.

"(B) one shall be appointed by the Administrator from private industry; and

"(C) one shall be appointed by the Administrator from the accounting profession.

"(2)(A) The term of office of each of the members of the Board, other than the Administrator, shall be 4 years except that—

"(i) any member appointed to fill a vacancy on the Board shall serve for the remainder of the term for which his predecessor was appointed; and

"(ii) no individual who is appointed under paragraph (1)(A) of this section shall continue to serve on the Board after ceasing to

be an officer or employee of the agency from which appointed.

"(B) A vacancy on the Board shall be filled in the same manner in which the original appointment was made.

"(C) The initial members of the Board shall be appointed no later than 90 days after funds are appropriated under subsection (D)(1) of this section.

"(3) Each member of the Board who is not an officer or employee of the Federal Government shall receive compensation at a rate not to exceed the daily equivalent of the rate prescribed for level V of the Executive Schedule for each day (including travel-time) in which the member is properly engaged in the actual performance of duties vested by law in the Board.

"(b) The Administrator, after consultation with the Board, may appoint an executive secretary and two additional staff members without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay payable for GS-16 of the General Schedule.

"(c) The Administrator may appoint, fix the compensation, and remove additional employees of the Board under the applicable provisions of title 5, United States Code.

"(d)(1) The Board may use, without reimbursement, any personnel of a Federal agency (with the consent of the head of the agency concerned) to serve on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section.

"(2) The Administrator, after consultation with the Board, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, of personnel for the purpose of serving on advisory committees and task forces to assist the Board in carrying out the functions and responsibilities of the Board under this section. Any individual so hired may be paid at rates for individuals not to exceed the daily equivalent of the rate of pay payable for level V of the Executive Schedule for each day (including traveltime) in which such individual is properly engaged in the actual performance of duties under this section.

"(e) Except as otherwise provided in subsection (a), the members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are utilized under subsection (d) shall receive no additional compensation for services, but shall continue to be compensated by the employing Department or agency of such officer or an employee. Appointees under subsection (d) from private life may receive compensation at rates fixed by the Administrator, but not to exceed the daily equivalent of the rate prescribed for level V of the Federal Executive Salary Schedule under section 5316 of title 5, United States Code, for each day (including traveltime) in which such appointees are properly engaged in the actual performance of duties under this section. While serving away from homes or the regular place of business, Board members and other appointees serving on an intermittent basis under this section shall be allowed travel expenses in accordance with section 5783 of title 5, United States Code.

"(f)(1) The Administrator, after consultation with the Board, shall have the exclusive authority to make, promulgate, amend



and rescind cost-accounting standards and interpretations designed to achieve uniformity and consistency in the measurement, assignment, and allocation of costs to contracts with the United States.

"(2) Subject to the provisions of paragraph (3) and subsection (j)(1), the cost-accounting standards, promulgated by the Administrator after consultation with the Board, shall be used by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing, administration, and settlement of all prime contracts with the United States in excess of \$500,000 entered into using procedures other than sealed bid procedures, and subcontracts in excess of \$500,000 thereunder, other than contracts or subcontracts in which the price is based on—

"(A) established catalog or market prices of commercial items sold in substantial quantities to the general public;

"(B) prices set by statute or regulation; or

"(C) fixed price contracts entered into based on adequate price competition.

"(3)(A) The Administrator, after consultation with the Board, may exempt classes or categories of contractors and subcontractors from the requirements of this section:

"(B) The Administrator, after consultation with the Board, shall establish procedures and criteria for the waiver of the requirements of this section with respect to individual contracts and subcontracts; and

"(C) Under the procedures and criteria established under subparagraph (B), the head of any executive agency may waive the requirement of this section with respect to individual contracts or subcontracts if such a waiver is in the public interest.

"(g)(1) The single system of Government-wide procurement regulations shall include regulations for the implementation of cost-accounting standards promulgated under subsection (f). Such regulations shall require any contractor or subcontractor as a condition of contracting with the United States to—

"(A) disclose in writing the cost-accounting practices of such contractor or subcontractor, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

"(B) agree to a contract price adjustment, with interest, for any increased costs paid to such contractor by the United States because of the failure of the contractor to comply with duly promulgated cost-accounting standards or to consistently follow the disclosed cost-accounting practices of such contractor.

"(2) The interest rate applicable to the price adjustment shall be the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 for such period. Such interest shall accrue from the time payments of the increased costs are made to the contractor or subcontractor to the time the United States receives full compensation for the price adjustment. If the parties fail to agree as to whether the contractor or subcontractor has complied with cost-accounting standards, the rules and regulations relating thereto, and cost adjustments demanded by the United States, such disagreements shall constitute a dispute under the Contract Disputes Act (41 U.S.C. 601 et seq.).

"(h)(1) Except as provided in paragraph (3), prior to the promulgation under this section of cost-accounting standards, and modifications thereof, the Administrator, following consultation with the Board, shall—

"(A) take into account—

"(i) the probable costs of implementation including inflationary effect, if any, compared to the probable benefits;

"(ii) the advantages, disadvantages, and improvements anticipated in the pricing, administration, and settlement of contracts; and

"(iii) the scope of, and alternatives available to, the action proposed to be taken;

"(B) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1)(A);

"(C)(i) publish an advanced notice of proposed rulemaking in the Federal Register in order to solicit comments on the report prepared pursuant to paragraph (1)(B);

"(ii) provide all parties affected a period of not less than 60 days after such publication to submit views and comments;

"(iii) during such 60-day period, consult with the Comptroller General and consider any recommendation of the Comptroller General; and

"(D) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected a period of not less than 60 days after such publication to submit views and comments.

"(2) Rules, regulations, cost-accounting standards, and modifications thereof shall have the full force and effect of law, and, except as provided in paragraph (3), shall become effective no sooner than 120 days after publication in the Federal Register in final form. Implementation dates for contractors and subcontractors shall be determined by agreement with the applicable Federal agency, but in no event later than the beginning of the second fiscal year of the contractor or subcontractor after a standard becomes effective. Rules, regulations, cost-accounting standards, and modifications promulgated by the Administrator shall be accompanied by prefatory comments, and by illustrations if necessary.

"(3) The requirements of paragraph (1) and the effective dates in paragraph (2) shall be waived if the Administrator determines that urgent and compelling circumstances make compliance with such requirements impracticable. A cost-accounting standard or modification of a cost-accounting standard for which the requirements of paragraphs (1) and (2) are waived shall be effective on a temporary basis provided that the Administrator—

"(A) publishes a notice of such cost-accounting standard or modification of a cost-accounting standard in the Federal Register and includes a statement that the cost-accounting standard or modification of a cost-accounting standard is temporary;

"(B) provides for a public comment period of not less than 30 days beginning on the date that the notice is published;

"(C) takes into account—

"(i) the probable costs of implementation, including inflationary effects, if any, compared to the probable benefits;

"(ii) the advantages, disadvantages, and improvements anticipated in the pricing, administration, and settlement of contracts; and

"(iii) the scope of, and alternatives available to, the action proposed to be taken; and

"(D) prepares and publishes a report in the Federal Register on the issues reviewed under paragraph (C) as part of the notice of final rulemaking.

"(4) The functions exercised under this section are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

"(i) The Administrator, after consultation with the Board, shall report to the Congress no later than 1 year after the date of enactment of this section, and annually thereafter, with respect to the activities and oper-

ations of the Board under this section, together with any appropriate recommendations.

"(j)(1) All cost-accounting standards, interpretations, modifications, rules, and regulations (including exemptions) promulgated by the Cost-Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) shall remain in effect unless amended, superseded, or rescinded by the Administrator pursuant to this section.

"(2) Cost-accounting standards in effect before the date of enactment of this section referred to in paragraph (1) shall be subject to the provisions of this section in the same manner as if promulgated by the Administrator under this section.

"(3) The Administrator, under the authority set forth in section 6 of this Act, shall ensure that costs which are the subject of cost-accounting standards promulgated under this section shall not be subject to regulations that are established by another executive agency that differ from such standards with respect to the measurement, assignment, and allocation of such costs.

"(k) For purposes of determining whether a contractor or subcontractor has complied with cost-accounting standards and has followed consistently the disclosed cost-accounting practices, any authorized representative of the head of the agency concerned, of the offices of Inspector general established pursuant to the Inspector General Act of 1978, or of the Comptroller General of the United States may examine and make copies of any documents, papers, or records of such contractor or subcontractor relating to, and solely for the purpose of ensuring compliance with such cost-accounting standards.

"(l)(1) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

"(2) Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168) is repealed."

#### PROFIT METHODOLOGY STUDY

SEC. 5. (a) The Administrator shall conduct a study to develop a consistent methodology which executive agencies may use for measuring the profits earned by Government contractors on procurements, other than procurements where the price is based on adequate price competition or on established catalog or market prices of commercial items sold in substantial quantities to the general public.

(b) The methodology developed under subsection (a) shall include adequate procedures for verifying and maintaining the confidentiality of financial data of contractors.

#### STUDY AND REPORT BY THE ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

SEC. 6. No later than April 1, 1989, the Administrator for Federal Procurement Policy, in consultation with the Comptroller General, shall conduct a study and submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives—

(1) on the extent to which the data collected by the Federal Procurement Data System is adequate for the management, oversight and evaluation of Federal procurement; and

(2) which shall include any appropriate recommendations for improvements of such system.

September 13, 1988

## CONGRESSIONAL RECORD — HOUSE

H 7463

**ELEVATION OF PRESIDENTIAL APPOINTEES  
WITHIN THE OFFICE OF MANAGEMENT AND  
BUDGET**

SEC. 7. (a) Section 5312 of title 5, United States Code, is amended by adding at the end thereof "The Director of the Office of Management and Budget."

(b) Section 5313 of title 5, United States Code, is amended—

(1) by adding at the end thereof "Deputy Director of the Office of Management and Budget."; and

(2) by striking out "The Director of the Office of Management and Budget."

(c) Section 5314 of title 5, United States Code, is amended by—

(1) adding at the end thereof "Administrator for Federal Procurement Policy" and "Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget."; and

(2) striking out "Deputy Director of the Office of Management and Budget."

(d) Section 5315 of title 5, United States Code, is amended—

(1) by striking out "Administrator for Federal Procurement Policy."; and

(2) by striking out "Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget."

(e) The amendments made by this section shall be effective on January 20, 1989.

**TRAVEL EXPENSES UNDER CERTAIN GOVERNMENT  
CONTRACTS**

SEC. 8. Section 24 of the Office of Federal Procurement Policy Act (41 U.S.C. 420) is amended—

(1) by redesignating such section as subsection (a) of section 24; and

(2) by adding at the end thereof the following new subsection:

"(b)(1) The provisions of subsection (a) shall not apply to any agreement between an executive agency and a State institution, or an executive agency and a nonprofit institution, entered into for the purpose for conducting federally sponsored research and related activities.

"(2) Under any agreement described under paragraph (1), costs incurred by personnel for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent that such costs do not exceed—

"(A) charges normally allowed by the respective institution in its regular operations as a result of an institutional policy; and

"(B) the limits and principles as are provided for by government-wide regulation of such costs established by the Director of the Office of Management and Budget.

"(3) The regulation under paragraph (2)(B) shall specifically provide that in the absence of an institutional policy regarding travel costs, the rates and amounts established under subchapter I of chapter 57 of title 5, United States Code, or by the Administrator of General Services or the President (or his designee) pursuant to any provisions of such subchapter shall apply to agreements between an executive agency and a State institution, or an executive agency and a nonprofit institution, entered into for the purpose of conducting federally sponsored research and related activities."

**MOTION OFFERED BY MR. BROOKS**

Mr. BROOKS. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. BROOKS moves to strike all after the enacting clause of the Senate bill S. 2215, and insert in lieu thereof the provisions of H.R. 3345 as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title of the Senate bill was amended so as to read: "An act to amend and extend the Office of Federal Procurement Policy Act, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3345) was laid on the table.

**GSA REPRESENTATIONAL  
EXPENSES REAUTHORIZATION**

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5049) to amend section 603(a) of the Federal Property and Administrative Services Act of 1949 to authorize the expenditure of monies for official reception and representation expenses.

The Clerk read as follows:

**H.R. 5049**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 603(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 475(a)) is amended by inserting "official reception and representation expenses (subject to limitations contained in appropriation Acts) and" after "including".*

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Texas [Mr. BROOKS] will be recognized for 20 minutes and the gentleman from Utah [Mr. NIELSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Texas [Mr. BROOKS].

Mr. BROOKS. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, H.R. 5049 amends the section of the Federal Property and Administrative Services Act that authorizes the appropriation of funds to carry out the act. The bill will add as a purpose for which funds may be expended, official reception and representation expenses. The bill establishes such authority subject to limitations contained in appropriation acts. It is based on the opinion of the Committee on Appropriations that this particular purpose requires specific authorization in the law.

At hearings before our Government Activities and Transportation Subcommittees, the witness for GSA indicated that official functions would include such activities as receptions, building dedication ceremonies, and receiving foreign dignitaries. The committee understands that some administrators have paid such costs out of their personal funds.

GSA testified that it would include the figure of \$5,000 in its budget request for this purpose for the next fiscal year.

Mr. Speaker, H.R. 5049 is in line with the practices of other agencies of the executive branch. The language of the bill making such spending author-

ity subject to limitations and appropriations acts will be a safeguard to prevent any misuse or excessive use of this authority. I urge adoption of H.R. 5049.

Mr. NIELSON of Utah. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5049, GSA representational expenses reauthorization, is a simple and straightforward piece of legislation that enables the General Services Administration to carry out some of its more routine ceremonial activities at no personal expense to its employees.

As the chairman indicated, the bill was reported out by the Government Operations Committee by a unanimous voice vote, and I urge its adoption.

Mr. Speaker, I yield back the balance of my time.

Mr. BROOKS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas [Mr. BROOKS] that the House suspend the rules and pass the bill, H.R. 5049.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

**GENERAL LEAVE**

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 5049, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

□ 1400

**FEDERAL PROPERTY MANAGE-  
MENT IMPROVEMENT ACT OF  
1988**

Mr. BROOKS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5104) to improve the efficiency and effectiveness of the management and disposal of Federal real and personal property, as amended.

The Clerk read as follows:

**H.R. 5104**

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

*SECTION 1. This Act may be cited as the "Federal Property Management Improvement Act of 1988".*

*SEC. 2. Section 201(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(c)) is amended by adding at the end thereof the following new sentence: "Sales of property pursuant to this subsection shall be governed by section 3709 of the Revised Statutes (41 U.S.C. 5), except that fixed price sales may be conducted in the same manner and subject to the same conditions as are applicable to the sale of property pursuant to section 203(e)(5) of this Act."*